

## Internal Revenue Service

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Date of Communication: Not Applicable  
Person To Contact: , ID No.

Telephone Number:

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TY:

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

LLC 1 =

LLC 2 =

New Sub 1 =

New Sub 2 =

State A =

State B =

State C =

Business A =

Business B =

X =

Dear :

We respond to your August 3, 2011 request for rulings on certain federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Parent, a State A corporation, is the common parent of an affiliated group of corporations that has elected to file a consolidated federal income tax return. Parent

directly owns all of the outstanding stock of Sub1, a State B corporation. Sub 1 has x shares of common stock outstanding and each share of common stock is entitled to one vote. Sub 1 directly owns all of the outstanding stock of Sub 2, a State A corporation. Sub 2 through regarded and disregarded entities is engaged in Business A and Business B.

Prior to the proposed transaction, Sub 1 will be in control of Sub 3, a State B corporation, within the meaning of section 368(c) through direct stock ownership of Sub 3. Sub 3 will be in control of Sub 4, a State C Corporation, within the meaning of section 368(c) through direct stock ownership of Sub 4. Sub 4 will be in control of Sub 5, a State C corporation, within the meaning of section 368(c) through direct stock ownership of Sub 5.

### **Proposed Transaction**

For business purposes and pursuant to a plan of reorganization, Parent proposes the following transaction (the Proposed Transaction):

Step 1. Sub 2 will (i) amend its State A charter and file a Certificate of Conversion with the Secretary of State of State A pursuant to State A law and convert from a State A corporation to a single member State A limited liability company, and (ii) immediately thereafter, file a Certificate of Conversion with the Secretary of State of State B and convert from a State A single member limited liability company to a State B single member limited liability company (LLC 1) that will be disregarded as an entity separate from its owner for U.S. federal income tax purposes (the "Conversion").

Step 2. After the Conversion, LLC 1 will form a new single member State B limited liability company (LLC 2) and contribute the assets and liabilities associated with Business B to LLC 2. LLC 1 will then distribute its sole membership interest in LLC 2 to Sub 1.

Step 3. LLC 2 will elect to be classified as an association taxable as a corporation (New Sub 1) for U.S. federal income tax purposes pursuant to §301.7701-3 of the Procedure and Administration Regulations (the "Reincorporation").

Step 4. (i) Sub 4 will form New Sub 2 and contribute the stock of Sub 5 to New Sub 2. (ii) Sub 5 will convert to a single member LLC (Sub 5 LLC) that will be disregarded as an entity separate from its owner for U.S. federal income tax purposes. (iii) Sub 5 LLC will distribute a partnership interest to New Sub 2. (iv) Sub 1 will form Newco and Sub 1 will contribute LLC 1 and New Sub 2 will contribute Sub 5 LLC to Newco in exchange for Newco stock (the "Contributions").

### **Representations**

Parent makes the following representations regarding the Conversion:

- (a) The fair market value of the Sub 1 stock that will be deemed to be received by Sub 1 in the Conversion will be approximately equal to the fair market value of the Sub 2 stock that will be deemed to be surrendered in the exchange.
- (b) Sub 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Sub 2 immediately prior to the transaction. For purposes of this representation, amounts used by Sub 2 to pay its reorganization expenses, amounts paid by Sub 2 to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Sub 2 immediately preceding the transfer will be included as assets of Sub 2 held immediately prior to the transaction.
- (c) During the five year period ending on the date of the Conversion: (1) no person related (as defined in §1.368-1(e)(4) of the Income Tax Regulations) to Sub 1 will have acquired Sub 2 stock with consideration other than Sub 1 stock; (2) no person related to Sub 1 will have acquired or redeemed Sub 2 stock with consideration other than Sub 1 stock or Sub 2 stock; and (3) no distribution will have been made with respect to the stock of Sub 2, other than ordinary, normal, regular dividend distributions made pursuant to the historic dividend paying practice of Sub 2 either directly or through any transaction, agreement, or arrangement with any other person.
- (d) Sub 1 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 2 that will be deemed to be acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in §368(a)(2)(C) of the Internal Revenue Code or §1.368-2(k).
- (e) Sub 2 will be treated as distributing the Sub 1 stock that will be deemed to be received in the Conversion and its other properties in pursuance of the plan of reorganization.
- (f) The liabilities of Sub 2 that will be deemed to be assumed by Sub 1 (within the meaning of §357(d)) were incurred by Sub 2 in the ordinary course of its business and are associated with the assets that will be deemed to be transferred to Sub 1.
- (g) Following the transaction, Sub 1 will continue, either directly or through one or more members of Sub 1's qualified group (within the meaning of §1.368-1(d)(4)(ii)), the historic business of Sub 2 or will use a significant portion of Sub 2's historic business assets in a business.
- (h) Sub 1 will pay or assume the expenses, if any, of each party incurred in connection with the Conversion in accordance with the guidelines of Revenue Ruling 73-54, 1973-1 C.B. 189.
- (i) There is no intercorporate indebtedness existing between Sub 1 and Sub 2 that was issued, acquired or will be settled at a discount.
- (j) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).

- (k) The total fair market value of the assets of Sub 2 that will be deemed to be transferred to Sub 1 in the Conversion will exceed the sum of: (i) the amount of any liabilities that will be deemed to be assumed (within the meaning of §357(d)) by Sub 1 in the exchange; (ii) the amount of any liabilities owed to Sub 1 by Sub 2 that are discharged or extinguished in connection with the exchange; and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under §361(a) without recognition of gain) received by Sub 2 in the exchange. The fair market value of the assets of Sub 1 will exceed the amount of its liabilities immediately after the Conversion.
- (l) Neither Sub 2 nor Sub 1 is under the jurisdiction of a court in a Title 11 or similar case within the meaning of §368(a)(3)(A).
- (m) Items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations as a result of the Conversion (see §§1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; §1.1502-13, as published by T.D. 8597).

Parent makes the following representations regarding the Reincorporation:

- (a) (i) No stock or securities will be issued or deemed to be issued for services rendered to or for the benefit of New Sub 1 in connection with the Reincorporation, and (ii) no stock or securities will be issued for indebtedness of New Sub 1 that is not evidenced by a security or for interest on indebtedness of New Sub 1 which accrued on or after the beginning of the holding period of Sub 1 for the debt.
- (b) All rights, title and interests for each copyright, in each medium of exploitation, will be deemed to be transferred to New Sub 1.
- (c) Sub 1 will not retain any significant power, right, or continuing interest, within the meaning of §1253(b), in the franchises, trademarks or trade names that are deemed to be transferred.
- (d) None of the stock that will be deemed to be transferred in the Reincorporation is “§306 stock” within the meaning of §306(c).
- (e) The Reincorporation is not the result of the solicitation by a promoter, broker, or investment house.
- (f) Sub 1 will not retain any rights in the property that will be deemed to be transferred to New Sub 1.
- (g) The value of the stock that will be deemed to be received in exchange for accounts receivable will be equal to the net value of the accounts transferred.
- (h) The adjusted basis and the fair market value of the assets that will be deemed to be transferred by Sub 1 to New Sub 1 in the Reincorporation will exceed the amount of any liabilities that will be deemed to be assumed (within the meaning of §357(d)) by New Sub 1 in the exchange.
- (i) The total fair market value of the assets that will be deemed to be transferred to New Sub 1 in the Reincorporation will exceed the sum of: (i) the amount of any

liabilities assumed (within the meaning of §357(d)) by New Sub 1 in the exchange, (ii) the amount of any liabilities owed to New Sub 1 by Sub 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock permitted to be received under §351(a) without recognition of gain) received by Sub 1 in the exchange. The fair market value of the assets of New Sub 1 will exceed the amount of its liabilities immediately after the Reincorporation.

- (j) The liabilities of Sub 1 that will be deemed to be assumed by New Sub 1 (within the meaning of §357(d)) in the Reincorporation were incurred in the ordinary course of business and are associated with the assets that will be deemed to be transferred to New Sub 1 in the exchange.
- (k) At the time of the Reincorporation, there will be no indebtedness between Sub 1 and New Sub 1, and there will be no indebtedness created in favor of Sub 1 as a result of the Reincorporation.
- (l) None of the stock that will be deemed to be received by Sub 1 in the Reincorporation will be §306 stock within the meaning of §306(c).
- (m) The Reincorporation will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- (n) All exchanges will occur on approximately the same date.
- (o) There is no plan or intention on the part of New Sub 1 to redeem or otherwise reacquire any stock or indebtedness that will be deemed to be issued in the Reincorporation.
- (p) Taking into account any issuance of additional shares of New Sub 1 stock, any issuance of stock for services; the exercise of any New Sub stock rights, warrants, or subscriptions; a public offering of New Sub stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of New Sub 1 that will be deemed to be received in the Reincorporation, Sub 1 will be in control of New Sub 1 within the meaning of §368(c).
- (q) Sub 1 will be deemed to receive stock of New Sub 1 approximately equal to the fair market value of the property that will be deemed to be transferred to New Sub 1.
- (r) New Sub 1 will remain in existence and will retain and use the property that will be deemed to be transferred to it in a trade or business.
- (s) There is no plan or intention by New Sub 1 to dispose of the property that will be deemed to be transferred other than in the normal course of business operations.
- (t) Each of the parties to the Reincorporation will pay its own expenses, if any, incurred in connection with the Reincorporation.
- (u) New Sub 1 will not be an investment company within the meaning of §351(e)(1) and §1.351-1(c)(1)(ii).
- (v) Sub 1 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of §368(a)(3)(A)) and the stock or securities deemed to be received in the exchange will not be used to satisfy the indebtedness of Sub 1.
- (w) New Sub 1 will not be a "personal service corporation" within the meaning of §269A.

- (x) At the time of the Reincorporation, the aggregate fair market value of the assets that will be deemed to be transferred by Sub 1 to New Sub 1 will equal or exceed Sub 1's aggregate adjusted basis in those assets.
- (y) The Reincorporation is not being undertaken with a view to prevent the consolidated return provisions from properly addressing loss duplication within the meaning of §1.1502-80(h).

Parent makes the following representation regarding the Contributions:

- (a) Following the Contributions, Sub 1 and New Sub 2 will be in control of Newco within the meaning of §368(c).
- (b) The Conversion, the Reincorporation, and the Contributions will be effected pursuant to a single plan.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Conversion:

1. For U.S. federal income tax purposes, the Conversion will be treated as a transfer by Sub 2 of substantially all of its assets to Sub 1 solely in exchange for Sub 1 voting stock and Sub 1's assumption of Sub 2's liabilities followed by the distribution by Sub 2 of the Sub 1 voting stock to Sub 1 in complete liquidation.
2. The Conversion will qualify as a tax-free reorganization under §368(a)(1)(C). The Conversion will not be disqualified or recharacterized by reason of the Reincorporation. Section 368(a)(2)(C); §1.368-2(k).
3. Sub 2 and Sub 1 will each be a "party to a reorganization" within the meaning of §368(b).
4. Sub 2 will recognize no gain or loss upon the deemed transfer of substantially all of its assets to Sub 1 solely in exchange for shares of Sub 1 voting stock and Sub 1's assumption of Sub 2's liabilities in the Conversion. Section 357; §361.
5. Sub 2 will recognize no gain or loss upon the deemed distribution of Sub 1 voting stock to Sub 1. Section 361(c).
6. Sub 1 will recognize no gain or loss upon the deemed receipt of the assets of Sub 2 solely in exchange for Sub 1 voting stock in the Conversion. Section 1032.
7. Sub 1's basis in the assets deemed to be received from Sub 2 in the Conversion will equal the basis of such assets in the hands of Sub 2 immediately prior to the Conversion. Section 362(b).
8. Sub 1's holding period in the assets deemed to be received from Sub 2 in the Conversion will include the period during which Sub 2 held such assets. Section 1223(2).
9. Sub 1 will recognize no gain or loss upon the deemed receipt of Sub 1 voting stock solely in exchange of its Sub 2 stock. Section 354(a)(1).

10. Under §381(a) and §1.381-1, the taxable year of Sub 2 will end on the effective date of the closing of the Conversion, and Sub 1 will succeed to and take into account the items of Sub 2 described in §381(c), subject to the provisions and limitations specified in §§381, 382, 383, and 384 and the regulations thereunder.

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Reincorporation:

1. For U.S. federal income tax purposes, the Reincorporation will be treated as a transfer by Sub 1 of the assets and liabilities in LLC 2 to New Sub 1 in deemed exchange for stock of New Sub 1.
2. No gain or loss will be recognized by Sub 1 as a result of the Reincorporation. Section 351(a); §357(a).
3. The basis of each asset received by New Sub 1 will equal the basis of such asset in the hands of Sub 1 immediately before the Reincorporation. Section 362(a).
4. The holding period of each asset received by New Sub 1 will include the holding period of such asset in the hands of Sub 1. Section 1223(2).
5. No gain or loss will be recognized by New Sub 1 as a result of the deemed issuance of New Sub stock in the Reincorporation. Section 1032(a).

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Contributions:

1. The contribution of LLC 1 by Sub 1 and of Sub 5 LLC by New Sub 2 in the Contributions will not prevent the Conversion from qualifying as a reorganization under §368(a)(1)(C). Section 368(a)(2)(C); §1.368-2(k).

### **Procedural Statements**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.



A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Mark S. Jennings  
Branch Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)

cc: